

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LESLIE GORDON,)
Petitioner,) Case No. MC 09-191-JLR-BAT
v.)
SOCIAL SECURITY ADMINISTRATION,)
OFFICE OF THE INSPECTOR GENERAL,)
Respondent,)
In re:)
BANK OF AMERICA CREDIT CARD)
SERVICES.)
REPORT AND
RECOMMENDATION

On December 22, 2009, petitioner Leslie Gordon, proceeding pro se, presented to this Court a Motion for Order Pursuant to Customer Challenge Provisions of the Right to Financial Privacy Act of 1978, with attachments, as well as an application to proceed in forma pauperis (“IFP”). Dkt. 1. On January 8, 2010, the Court granted petitioner’s IFP application, but, upon review of petitioner’s motion, found that the motion contained unredacted personal identifiers in violation of Local Rule CR 5.2(a) and directed petitioner to file an amended motion and attachments within 30 days from the date of that order. Dkt. 6. On January 27, 2010, petitioner

1 filed a redacted version of an attachment to her motion (Dkt. 7), but did not file an amended
2 motion as directed. To date, petitioner has not filed an amended motion.

3 On February 17, 2010, the Court issued an order directing petitioner to show cause why the
4 motion and this case should not be dismissed. Dkt. 8. The Court found that petitioner had failed
5 to fully comply with the Court's order directing her to file an amended motion. The Court also
6 found that petitioner's motion did not contain an affidavit or sworn statement that satisfied the
7 requirements of the governing statute, 12 U.S.C. § 3410(a).

8 The Court informed petitioner that a motion under § 3410:

9 shall contain an affidavit or sworn statement—

10 (1) stating that the applicant is the customer of the financial institution from which
financial records pertaining to him have been sought; and

11 (2) stating the applicant's reasons for believing that the financial records sought are
not relevant to the legitimate law enforcement inquiry stated by the Government
authority in its notice, or that there has not been substantial compliance with the
provisions of [the Right to Financial Privacy Act of 1978].

12 U.S.C. § 3410(a). The Court must order the Government to file a sworn response if it finds
15 that petitioner has complied with the threshold standards of § 3410(a). *Id.* § 3410(b). The
16 required affidavit must show a factual basis for concluding that there is no reason to believe that
17 the records sought contain information relevant to a legitimate law enforcement purpose.

18 *Hancock v. Marshall*, 86 F.R.D. 209, 211 (D.C.D.C. 1980). Failure to attach the required
19 affidavit may be a sufficient basis for the Court to deny the motion. *Donovan v. U.A. Local 38*
20 *Plumbers & Pipe Trades Pension Fund of San Francisco*, 569 F. Supp. 1488, 1490 (C.D. Cal.
21 1983).

22 On March 1, 2010, petitioner filed an Affidavit of Amended Motion. Dkt. 9. The affidavit
23 states:

I, Leslie Yvette Gordon, am a customer of Bank of America Credit Card Services, and I am the customer whose records are being requested by the Government. The Financial records sought by the Social Security Administration, Office of the Inspector General, are not relevant to the legitimate law enforcement inquiry. These records should not be disclosed under the Right to Financial Privacy Act of 1978, preventing the government from obtaining access to my financial records. Also, I am unable to understand the legal basis without legal counsel.

Id. The Court finds that petitioner's affidavit does not comply with the threshold standards of § 3410(a). The affidavit does not state the reason petitioner believes the government should not be able to access her financial records. It does not provide a factual basis for concluding that there is no reason to believe that the records sought contain information relevant to a legitimate law enforcement purpose.

Because petitioner has failed to file an amended motion as directed, and because the Court finds that petitioner has failed to comply with the threshold requirements of § 3410(a), the Court declines to order the government to file a response. Instead, the Court recommends that petitioner's motion be DENIED and this case DISMISSED without prejudice. A proposed order accompanies this Report and Recommendation.

DATED this 10th day of March, 2010.



BRIAN A. TSUCHIDA
United States Magistrate Judge